A **MENTERI DALAM NEGERI & ORS v. GOPAL R SUBRAMANIAM**

FEDERAL COURT, PUTRAJAYA
MD RAUS SHARIF CJ
SURIYADI HALIM OMAR FCJ
RAMLY ALI FCJ
B PRASAD SANDOSHAM ABRAHAM FCJ
JEFFREY TAN FCJ
[CRIMINAL APPEAL NO: 05-153-06-2016 (R)]
1 JUNE 2017

C ***CRIMINAL PROCEDURE:*** *Preventive detention – Detention under Prevention of Crime Act 1959 – Report of inquiry officer – Service of report on detainee – Section 10(2) – Officer having custody of detainee to serve report forthwith – Meaning of 'forthwith' – Whether to mean 'as soon as reasonably practicable' – Interpretation Acts 1948 and 1967, s. 54*

D ***STATUTORY INTERPRETATION:*** *Prevention of Crime Act 1959 – Section 10(2) – Service of report of inquiry officer on detainee – Officer having custody of detainee to serve report forthwith – Meaning of 'forthwith' – Whether to mean 'there and then' or 'immediate' – Whether to mean 'as soon as reasonably practicable' – Interpretation Acts 1948 and 1967, s. 54*

E The respondent herein was arrested under s. 3 of the Prevention of Crime Act 1959 ('POCA'). Subsequently, following a report prepared by the inquiry officer ('the report'), and service thereof on the respondent by Inspector Ismantie, the officer having custody of the respondent, the prevention of Crime Board convened a sitting and issued a detention order
F ('the order') detaining the respondent for two years pursuant to s. 19A(1) of the POCA. Being dissatisfied, the respondent applied to the High Court for a writ of *habeas corpus* for his release, arguing, principally, that the detention was flawed, as Inspector Ismantie had not served the order on him 'forthwith' as mandated by s. 10(2) of the POCA. It was not in dispute, in this case, that the said officer having custody of the respondent had received
G the report from the inquiry officer on 19 August 2015, and had served the same on the respondent on the same day at 1.55pm. Be that as it may, the High Court took the view that the word 'forthwith' in s. 10(2) of the POCA meant 'immediate', and – as the service of the report on the respondent on the facts was not immediate – ruled the detention ineffective and unlawful.
H In this appeal, the Minister of Home Affairs and the other appellants argued that the High Court was in error in ruling the way it did, as 'forthwith' in s. 10(2) of the POCA could only mean 'within reasonable time' or 'as soon as reasonably practicable'.

I

Held (allowing appeal)
Per Prasad Sandosham Abraham FCJ delivering the judgment of the court:

(1) The word 'forthwith' in s. 10 of POCA is to be construed as 'as soon as reasonably practicable' and not 'then and there' or 'immediate'. (para 17)

(2) The court dealing with *habeas corpus* applications that revolve around the word 'forthwith' ought to approach the applications in the following manner, *viz*: (i) where the facts showed that there was a delay in the officer having custody of the applicant in serving a copy of the finding of the inquiry officer on that person, to look at the affidavit of the respondent and ascertain whether the respondent has explained the delay sufficiently; and (ii) thereafter to consider whether, in the circumstances and upon the explanation given, the officer acted without unreasonable delay and as soon as practicable. (para 18)

(3) On the facts of the instant appeal, there was no infringement of the requirements of s. 10(2) of POCA, as the Inspector having custody of the respondent had 'as soon as reasonably practicable' duly served the report on the respondent on 19 August 2015 at 1.55pm, after having received the inquiry findings on the same day. The period between the Inspector receiving the report and serving it on the respondent was well within the definition of 'forthwith'. (para 19)

Bahasa Malaysia *Headnotes*

Responden di sini telah ditangkap bawah s. 3 Akta Pencegahan Jenayah 1959 ('POCA'). Berikutnya, ekoran satu laporan yang disediakan oleh pegawai inkuiri ('laporan'), serta penyampaian laporan kepada responden oleh Inspektor Ismantie, pegawai yang mempunyai jagaan atas responden, Lembaga Pencegahan Jenayah telah bersidang dan seterusnya mengeluarkan satu perintah tahanan ('perintah') menahan responden untuk tempoh dua tahun bawah s. 19A(1) POCA. Tidak berpuas hati, responden memohon writ *habeas corpus* bagi pembebasannya dengan menghujahkan, secara pentingnya, bahawa penahanannya adalah cacat kerana Inspektor Ismantie tidak menyerahkan laporan kepadanya dengan 'segera' seperti yang diwajibkan oleh s. 10(2) POCA. Dalam kes ini, tidak dinafikan bahawa pegawai yang mempunyai jagaan atas responden tersebut telah menerima laporan daripada pegawai inkuiri pada 19 Ogos 2015, dan telah menyerahkannya kepada responden pada jam 1.55 petang hari yang sama. Apapun, Mahkamah Tinggi berpendapat bahawa perkataan 'segera' dalam s. 10(2) POCA tersebut bermaksud 'serta merta', dan – oleh kerana penyampaian laporan kepada perayu atas fakta tidak boleh dianggap sebagai serta merta – memutuskan penahanan sebagai tidak berkesan dan tidak sah. Dalam rayuan ini, Menteri Dalam Negeri dan perayu-perayu yang lain menghujahkan bahawa

Mahkamah Tinggi terkhilaf dalam membuat keputusan seperti di atas, kerana perkataan 'segera' di s. 10(2) POCA hanya boleh ditakrif sebagai 'dalam masa yang munasabah' atau 'seawal yang secara praktikalnya munasabah'.

Diputuskan (membenarkan rayuan)

Oleh Prasad Sandosham Abraham HMP menyampaikan penghakiman mahkamah:

(1) Perkataan 'segera' dalam s. 10(2) POCA hendaklah ditakrif sebagai bermaksud 'seawal yang secara praktikalnya munasabah' dan bukannya 'pada waktu itu juga' atau 'serta merta'.

(2) Pendekatan yang harus diambil oleh mahkamah yang mengendali permohonan *habeas corpus* yang berkisar sekitar perkataan 'segera' adalah seperti berikut, iaitu: (i) jika fakta kes menunjukkan terdapat kelengahan oleh pegawai yang mempunyai jagaan terhadap pemohon dalam menyerahkan laporan pegawai inkuiri ke atas pemohon tersebut, maka mahkamah hendaklah melihat kepada afidavit responden bagi memastikan sama ada responden telah menjelaskan dengan secukupnya kelengahan tersebut; dan (ii) kemudiannya menimbangkan sama ada, dalam hal keadaan yang wujud dan mengambil kira penjelasan yang diberi, pegawai tersebut bertindak tanpa kelengahan tidak munasabah dan seawal yang secara praktikalnya munasabah.

(3) Berasaskan fakta kes semasa, tidak berlaku apa-apa pelanggaran terhadap kehendak s. 10(2) POCA, kerana Inspektor yang mempunyai jagaan terhadap responden berkenaan telah, 'seawal yang secara praktikalnya munasabah', menyerahkan laporan ke atas responden pada Ogos 2015 pada jam 1.55 tengah hari, setelah menerima laporan tersebut pada hari yang sama. Tempoh antara dia menerima laporan dan menyerahkannya kepada responden adalah termasuk bawah takrif 'segera'.

Case(s) referred to:

Basant Raj v. State of Rajasthan 1994 CriLJ 2137 ***(refd)***

Hanizam Hassan v. Pengerusi Lembaga Pencegahan Jenayah & Yang Lain [2015] 5 CLJ 223 HC ***(refd)***

Keshav Nilkanth Joglakar v. Commissioner of Rice, Greater Bombay AIR 1957 ***(refd)***

Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v. Liau Nyun Fui [1991] 1 CLJ 458; [1991] 1 CLJ Rep 458 SC ***(refd)***

Legislation referred to:

Interpretation Acts 1948 and 1967, s. 54(2)

Prevention of Crime Act 1959, ss. 3(1), 4(1)(a), (2)(a), 9, 10(2), 19A(1)

Other source(s) referred to:

Maxwell in Interpretation of Statutes, 11th edn, p 341

KJ Aiyar, *Text Judicial Dictionary (A Complete Law Lexicon)*, 18th edn, Butterworths, p 427

Anandan Krishnan, *Words Phrases & Maxims (Legally and Judicially Defined)* by citing Maxwell in Interpretation of Statutes, Lexis Nexis 2008, 11th edn, p 341

For the appellant - Mohammad Al-Saifi Hashim & Muhammad Sinti; SFCs
For the respondent - Naizatul Zamrina Karizaman; M/s KL Chee & Co

[Editor's note: For the High Court judgment, please see Gopal R Subramaniam lwn. Menteri Dalam Negeri, Malaysia & Yang Lain [2016] 1 LNS 1081 (overruled.)]

Reported by Wan Sharif Ahmad

JUDGMENT

Prasad Sandosham Abraham FCJ:

Introduction

[1] We heard and allowed this appeal on 12 April 2017. In light of the fact that our decision involved an interpretation of s. 10(2) of the Prevention of Crime Act 1959 (POCA) and that there are several pending appeals revolving around the said section, when allowing the appeal we intimated to counsel that grounds of judgment would follow and we now append our said grounds.

Material Facts

[2] The material facts of this instant case are clearly elucidated in the grounds of judgment of the learned High Court Judge.

[3] Essentially, on 5 July 2015, the respondent was arrested under s. 3(1) of POCA. The respondent was then remanded pursuant to s. 4(1)(a) and s. 4(2)(a) of POCA so as to enable the inquiry officer (Nor Jamilah Shuhadah binti Tohet) to conduct an investigation pursuant to s. 9 of POCA.

[4] The inquiry officer then prepared a report from the findings of her inquiry as required under s. 10 of POCA. The inquiry officer did all that was needed until the commencement of the board which sat on 3 September 2015.

[5] The respondent was subsequently detained for a period of two years from 3 September 2015 at "Pusat Pemulihan Khas" Bentong, Pahang on a detention order (the said order) issued by the board pursuant to s. 19A(1) of POCA.

[6] Inspector Ismantie the officer having custody of the respondent, on 19 August 2015 received the report from the inquiry officer. On the same day (19 August 2015) at 1.55pm the said inspector served a copy of the report to the respondent pursuant to s. 10(2) of POCA. The issue in this appeal pertains to the time-frame between the time the said inspector received the report to the time the said inspector served it to the respondent and whether it could be construed as "forthwith". Section 10(2) and the requirement of

service of the "forthwith" applies from the service and the inquiry report by the officer having custody of the respondent, on the respondent and the consideration of the court should be confined to that.

Substantive Arguments

[7] Learned counsel for the appellants and respondent pivoted their argument on the interpretation of s. 10(2) of POCA and the meaning of the word "forthwith". The appellants in this case submitted that the word "forthwith" must be read as "as soon as reasonably practicable". Counsel for the respondent argued that the meaning to be ascribed to the word "forthwith" as "immediately".

[8] The High Court, following the decision of another High Court in *Hanizam Hassan v. Pengerusi Lembaga Pencegahan Jenayah & Yang Lain* [2015] 5 CLJ 223, which also dealt with an application for *habeas corpus* based on s. 10(2) of POCA, took the meaning of "forthwith" to be read as "immediate".

[9] It is to be observed that under s. 10(2) of POCA, the court is analysing the length of time that the officer having custody of the applicant takes to serve a copy of the finding of the inquiry officer on the respondent.

The Law

[10] The starting point in considering the question posed before us would be the Interpretation Acts 1948 and 1967 (Act 388) particularly, s. 54(2) which we now set out:

> 54. (1) In computing time for the purposes of any written law:
>
> (a) …
>
> (b) …
>
> (c) …
>
> (d) …
>
> (2) Where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arises. (emphasis added)

[11] Section 10(2) of POCA does not contain a specified time for service, save to state that where no time is prescribed it shall be done with all convenient speed and as often as the prescribed occasion arises. For a case on point we refer to the Supreme Court decision of *Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v. Liau Nyun Fui* [1991] 1 CLJ 458; [1991] 1 CLJ (Rep) 458 where Lord President Abdul Hamid Omar (as he then was) said:

It can immediately be observed that there is no time frame given in s. 3(i) of the Enactment. Since no time is prescribed then according to s. 38 of the Interpretation and General Clauses Ordinance 1948 (similar provision also found in s. 54(2) of the Interpretation Acts 1967), then anything which shall be done shall be done with all convenient speed.

There is however a time frame given by s. 3(ii) of the Enactment imposed by the words 'as soon as may be' after action has been taken under subs. (i) appearing in that subsection. **The words 'as soon as may be' means as nearly as may be reasonable in the circumstances of the case**. See also *Aminah v. Superintendent of Prison, Pengkalan Chepa* [1968] 1 MLJ 92.

Whoever caused the delay must explain the delay; and it is for the Court to decide whether the delay is reasonable under the circumstances. (emphasis added)

Turning to the present case, it seems clear that a time frame is not prescribed under s. 2(ii) of the Enactment and the Timbalan Menteri cannot therefore be said to be imposed with an obligation to make a restriction order within a specified time. The word "thereafter" used in subsection (ii) of the Enactment clearly connotes that the Timbalan Menteri may make a restriction order "thereafter", that is, some-time after making the order of arrest and detention, after such further enquiry he may deem necessary.

Two distinct situations would therefore arise where a restriction order is issued and that is:

(1) after a further enquiry (if further enquiry is deemed necessary):

(2) after no further enquiry is deemed necessary.

In the light of the judgment in *Phua Hing Lei*'s case the position in law seems to be that when no time frame is prescribed then anything that shall be done under s. 2(ii) shall be done with all convenient speed. Accordingly in respect of situation (l), the further enquiry and the issue of the restriction order shall be effected with all convenient speed. What constitutes convenient speed would depend on the circumstances of each case. In respect of situation (2), where the Timbalan Menteri does not deem it necessary for any further enquiry he ought to proceed thereafter, that is, after the detention, to make the restriction order with all convenient speed.

The correct test to be applied therefore is not on the basis of unreasonable delay but convenient speed. The learned Judicial Commissioner determined the question before him on the basis of unreasonable delay. This was not a proper approach. The question that was before him was whether the Timbalan Menteri in the particular circumstances of that case had acted with all convenient speed in making the restriction order. Strictly it was for the respondent to show that the Timbalan Menteri had not so acted and not for the Timbalan Menteri to provide an explanation acceptable to the Court.

(emphasis added)

[12] Turning however to the definition of the word "forthwith", we refer to *Words Phrases & Maxims (Legally and Judicially Defined)* by Anandan Krishnan, Lexis Nexis 2008 citing *Maxwell in Interpretation of Statutes*, 11th edn, at 341, and we quote:

> When a statute require that something shall be done forthwith or immediately or even instantly it should probably be understood as allowing a reasonable time for doing it. Expression forthwith should be construed to mean within reasonable period. [*Basant Raj v. State of Rajasthan* 1994 CrLJ 2137 at 2140 (Raj); see also *Bouviet's Law Dictionary*, unabridged Rawle's 3rd edn Vol I at 1289.
>
> JD
>
> *The word 'forthwith' has been interpreted to mean as soon as possible; without any delay. If there is some delay which is reasonably explained, there is no violation of the mandatory requirement of the law. Thus, where it has been explained that as many as seven detention orders were made by the district magistrate on 23 August 1973, reports have to be typed in all those cases and they were typed on 24 and 25 August and 26 August was Sunday and therefore the report could not be sent earlier than 27th the report was held to have been sent forthwith, as the apparent delay of three days have been satisfactorily explained. [Gopal Mondal v. State of WB AIR 1975 SC 1807 (1807), (1975) 1 SCWR 550 1975 CrLJ 1554]. The word forthwith means as soon as reasonably possible. [Kamlakar Kurrey v. SDO, Raipur 1982 MPWN 321 (DB)]*. (emphasis added)
>
> Lord Hardwicke observed in *Rex v. Francis* [1938] 4 All ER 570 that the word immediately and the word forthwith bear the same meaning. Lord Hardwicke further laid down: The word is never understood either to exclude mesne acts or time, but only means with convenient speed ... In *Queen v. The Justice of Berkshire* (1879) 4 QBD 469 , Cockburn CJ said: The words forthwith and immediately have the same meaning. They are stronger than the expression within a reasonable time and imply prompt, vigorous action, without any delay and whether, there has been such action is a question of fact having regard to the circumstances of the particular case. *Re Muscovitch* [1939] 1 All ER 135, Sir Wilfred Greene MR says:
>
> > Word forthwith which is peremptory and admits of no interval of time ... In the case of *Re Muscovitch* [1938] 4 All ER 570, Farwell J said:
> >
> > The word forthwith means that the copy of the notice shall be sent immediately upon the appeal being entered or at any rate within every short time. In *KN Joglekar v. Commissioner of Police* AIR 1957 SC 28, Venkatarama Ayyar J, speaking for the court, explained thus: On these authorities, it may be taken an act which is to be done forthwith must be held to have been so done. When it is done with all reasonable despatch and without avoidable delay. [*Mahender Singh v. State of Rajasthan* 1972 WLN 70]

According to Thommen J, the expression forthwith has to be understood in the context of the statute. Where the statute prescribes the payment of money and the accrual of interest thereon at certain points of time the expression forthwith must necessarily be understood to be immediate or instantaneous, so as to avoid any ambiguity or uncertainty. The legislature in s. 73(2-A) of Companies Act 1956, intended the expression forthwith to refer to a particular day on which the liability to repay the principal amount arose and that is the day from which the period of eight days has to be computed and on the expiry of that period, interest begins to accrue. According to Mohan J, it cannot be said that forthwith means *eo instanti*. [*Raymond Synthetics Ltd v. Union of India* (1992) 2 SCC 255 at 271, 292, AIR 1992 SC 847, (1992) 73 Com Cas 762. (emphasis added)

In its ordinary signification, immediately (*Whitehurst v. North Carolina Mut Ins Co* 78 Am Dec 246) as soon as by reasonable exertion, confined to the object, it may be accomplished (*Anderson v. Goff* 1 Am St Rep 34); as soon as is reasonably convenient (*Hudson v. Hill*, 43 LJCP 273, 279); as soon as reasonably can be; as soon as reasonably possible; as soon as the thing may be done by reasonable exertion confined to that object (Bouvier L Dict), as soon as with reasonable dispatch in the ordinary course of business, it can be done, by and by (Cooper Dict); directly (Webster) at the same point of time; at one and the same time; simultaneously at once; now as from this moment; henceforth; in the reasonable course of the orderly conduct of the business of an office, presently; with all reasonable diligence and dispatch; with diligence. (*Ciffey v. New York Cent Ins Co* 53 Am St Rep 202); with due diligence with reasonable diligence (*Central City Ins Co v. Oates* 11 Am St Rep 67) without unreasonable delay; without unreasonable or unnecessary delay (*Munz v. Standard L etc Ins Co* 99 Am St Rep 830); without unnecessary procrastination and delay. Such is the import of the term, but it varies with any particular case and will imply a longer or shorter period, according to the nature of the thing to be done.

[13] The text also contains several commentaries on the word "forthwith" and instances of which are set out below at p. 427:

The word 'forthwith' means 'without any delay or loss of time' and a word which does not imply delay but quite the reverse.

(emphasis added)

See *Roberts v. Brett* 11 ER 1363 which imply adopted as to the meaning of 'forthwith' in *Hudson v. Hill* (1874) 43 LJCP 277. *Nam Bee Rubber Estate Sdn Bhd v. Syarikat Tanaman Perak Bhd* [1986] 1 MLJ 29 at 34 per Hashim Yeop A Sani SCJ

Author

'Forthwith' means without unreasonable delay. (*Keshav Nilkantha v. Commissioner of Police* AIR 1957 SC 28). The word 'Forthwith' cannot mean 'as soon as may be'. (*Vaidhya Dev Verma v. District Magistrate* AIR 1969 SC 323). The word 'Forthwith' means immediately. (*Awas Samasya Niwaran Sanstha v. State of Madhya Pradesh* AIR 1995 Madhya Pradesh 69). The word 'Forthwith' should not be construed as to mean 'then and there', but means 'within reasonable time'. (*Basant Raj v. State* 1994 WLN 92)

A Author

The word 'forthwith' means immediately, straightaway, as soon as possible, **as soon as reasonable possible** or within a specific time limit.

(emphasis added)

B **[14]** We also refer to the *Text Judicial Dictionary (A Complete Law Lexicon)* by KJ Aiyar, 18th edn, Butterworths at p. 427, and we quote:

Explaining this word, *Maxwell in Interpretation of Statutes*, 11th edn, p 341 observes:

> C When a statute require that something shall be done forthwith or immediately or even instantly it should probably be understood as allowing a reasonable time for doing it.
>
> Expression forthwith should be construed to mean within reasonable period. [*Basant Raj v. State of Rajasthan* 1994 CrLJ 2137 at 2140 (Raj); see also *Bouviet's Law Dictionary*, unabridged Rawle's
> D 3rd edn Vol I at 1289.
>
> The word "forthwith" in s 3(3) and the phrase 'as soon as may be' as used in s. 3(4), Preventive Detention Act 1950, were considered in *Keshav Nilkanth Joglakar v. Commissioner of Rice, Greater Bombay* AIR 1957 SC 28 (32), [1956] SCR 653, (658, 669) and it was
> E observed:
>
> > … Forthwith… cannot mean the same thing as 'as soon as may be' … and that the former is more preemptory than the latter. The difference between the two expressions lies…in this that while under s. 7, the time that is allowed to the authority to send the communication to the detenue is what is reasonably
> > F convenient, under s. 3(3) what is allowed is only the period during which he could not, without any fault of his own, send the report. [*Bidya Deb v. Dist Magistrate*, Tripura AIR 1969 SC 323 (325), 1969 CrLJ 525, (1969) 1 SCA 189, (1969) 1 SCJ 900, (1968) 2 Um NP 527].
>
> G (emphasis added)

The term 'forthwith' has been defined in *Wharton's Law Lexicon*, 14th edn, as below:

> When a defendant is ordered to plead forthwith, he must plead within 24 hours. When a statute or rule court requires an act to
> H be done 'forthwith' it means that the act is to be done within a reasonable time having regard to the object of the provisions and the circumstances of the case. [*Tripathi Sansnath v. Tripathi Bhagwatnath* AIR 1966 All 615 (616), 1964 ALJ 1085].

[15] We also refer to the Supreme Court of India's decision of *Keshav*
I *Nilkanth Joglakar v. Commissioner of Rice*, Greater Bombay AIR 1957 at p. 28 on where TV Aiyyar:

that the word "forthwith" in s. 3(3) of the Preventive Detention Act, 1950, has not a fixed and an absolute meaning and it must be construed with reference to the object of the section and the circumstances of the case. It cannot mean the same thing as "as soon as may be" in s. 7 of the Act and the former is more peremptory than the latter. The difference between the two expressions lies in this that while under s. 7 the time that is allowed to the authority to send the communication to the detenue is what is reasonably convenient, under s. 3(3) what is allowed is only the period during which he could not, without any fault of his own, send the report.

An act which is to be done forthwith must be held to have been so done when it is done with all reasonable dispatch and without avoidable delay. (emphasis added)

The *Queen v. The Justices of Berkshire* ([1878-79] 4 Q.B.D. 469), *Hudson and Others v. Hill and Others* ([1874] 43 L. J. C.P. 273), and *Beg. v. Price*, (8 Moore P.C. 203), relied on.

[16] *Basant Raj v. State of Rajasthan* 1994 CriLJ 2137, the Rajasthan High Court had cause to consider the definition of the word "forthwith" in the context of a statute that used the particular phrase and RS Verma J at para. 20, in this manner:

20. **In my opinion the term 'forthwith' in the context of the Rules should not be construed as to mean 'then and there'. Expression "forthwith" should be construed to mean 'within reasonable period'.** There may be myriad situations where a person having licence for a weapon may be carrying the weapon with him on his person and he may not be able to produce it immediately on being asked to produce the same. I may illustrate the situation by citing a hypothetical case. Mr. Tom holds a valid licence for a gun. He is sitting in his house and the gun is lying by his side. The licence is kept locked in an almiraha. The key of which is with his wife and the wife is out station. Mr. Tom is attacked by unknown intruders who unlawfully enter his house. He fires at them and chases them at a distance from his house. The police comes in the meanwhile and the intruders have made good their escape and Mr. Tom is arrested by the police with a gun in his possession but without being a licence on his person. He is asked to produce the licence on demand and he explains the situation but the officer insists upon immediate production and on Mr. Tom's failure to do so, arrests him. Could it be said that he has committed an offence because he did not carry the licence of the arm with him on his person. In my opinion a categorical answer to the question would be No, No and an emphatic No. This is only one illustration and illustrations, may be multiplied wherein a person holding a valid licence for a gun may not be in a position to carry the same with him on his person but may be in a position to produce it before a Competent Officer within a reasonable period on being asked to do so. In the present case the licence was produced before the competent Magistrate, just the next day without wasting any time. It may be stated that the petitioner was

A under arrest and had been produced before the Magistrate on the next day. In these circumstances, I am of the view that there was no contravention of Rules 62 of the Arms Act so as to make it punishable within a meaning of Section 30 of the Arms Act. Thus, I find that the learned Magistrate had no material whatsoever, to frame charge under Rule 62 of the Arms Rules read with Section 30 of the Arms Act against
B the petitioner.

(emphasis added)

[17] Having considered all the cases and the comments of the learned authors referred to aforesaid, we would hold that the word "forthwith" in
C s. 10(2) of POCA is to be construed as "as soon as reasonably practicable" having considered all the facts of the case and not "then and there" or "immediate".

[18] We would direct that in all applications for *habeas corpus* grounded on s. 10(2) of POCA, revolving around the word "forthwith", the court should
D approach the said applications in the following manner *viz*:

(a) If the facts of the case show that there was a delay in the officer having custody of the applicant in serving a copy of the finding of the inquiry officer on that person, the court must then look at the affidavit of the respondent to ascertain whether the respondent has explained the delay
E sufficiently; and

(b) the court then must consider in the circumstances of the case and the explanation for the delay, whether the officer acted without unreasonable delay and as soon as practicable.

F **[19]** On the facts of this instant appeal, we find that there was no infringement of the requirements of s. 10(2) of POCA as the Inspector having custody of the respondent had "as soon as reasonably practicable" duly served the report on the respondent on 19 August 2015 at 1.55pm, after having received the inquiry findings on the same day. The period between
G the Inspector receiving the report and serving it on the respondent was to our mind well within the definition of "forthwith". Therefore under those circumstances we allowed the appeal and made the necessary orders.

H

I